

BHW TO FCC

M E M O R A N D U M

June 9, 1982

Re: Low-"Tar" Cigarette Advertising and the FTC Cigarette Testing Program: A Time for Re-examination

Inherent limitations of the FTC cigarette testing program, and borderline low-"tar" advertising practices resulting from the way the test results are reported have contributed to substantial consumer confusion and misunderstanding. This situation threatens to erode public confidence in both the FTC's test reports and the industry's advertising claims. However, both the tests and the advertising disclosure of the test results are important elements of a program to encourage the development and promotion of lower "tar" cigarettes. Therefore, steps ought to be taken now to make those changes in the way the testing and advertising program is carried out which will preserve its integrity and effectiveness and shore-up public confidence in it.

FTC's testing program rests on an informal basis, with no specific authority or directive in statute or regulation. The advertising disclosures are based on a voluntary industry agreement with FTC, and are not governed by any agency regulation or order. The informality and voluntariness of the program give it a unique flexibility and amenability to appropriate reform through cooperative efforts of the parties. The Commission and its staff could perform a useful role by taking a fresh look at the entire program and in calling upon the industry to cooperate in the endeavor.

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### Testing Limitations

The present FTC test methodology itself is sound. The limitations are inherent in the nature of the task and the difficulty of conveying the test results to the public in clear, understandable and meaningful terms. The tests do not measure the tar and nicotine content of the cigarettes. Rather, they measure the delivery of tar and nicotine through the filter and ventilation system when the cigarettes are smoked by the smoking machine in accordance with the standard test protocol specifying puff rate, butt length, etc. The standardized machine tests represent a reasonable norm which establishes comparability of measured results among different brands of cigarettes. Since the smoking habits of individuals differ widely, the measured test results do not necessarily represent the precise tar and nicotine yield that any particular smoker will experience when he or she smokes one of the tested brands. The circumstance is analogous to EPA's gasoline mileage test results, which are disclosed in auto advertising with a disclaimer: "Use estimated MPG for comparison. Your mileage may differ depending on speed, distance, weather. Actual highway mileage lower."

It has been theorized by some that smokers of low-"tar" cigarettes may automatically compensate for the reduced delivery of "tar" and nicotine by oversmoking, e.g., by puffing more often or more deeply, by smoking each cigarette closer to the filter, or by smoking more

cigarettes. The FTC staff made special note of this so-called "compensation" theory in its May 1981 Report on the Cigarette Advertising Investigation.

More recently, following Brown & Williamson's successful introduction of its BARCLAY brand, a new entrant into the ultra-low "tar" market segment which quickly became an effective competitor in that segment, some of Brown & Williamson's competitors retaliated by complaining to FTC about an alleged disparity between machine-test results and human-smoking results with BARCLAY. Both Dr. Fred G. Bock and Dr. Lynn T. Koslowski, two of the private consultants retained by FTC to review those complaints about BARCLAY, made reference to the "compensation" theory and recommended that the entire testing program be reviewed and re-evaluated. They believe the test results as currently reported may bear no real relation to what any given smoker of a low-"tar" brand gets from his or her cigarette.

Furthermore, the FTC test reports themselves contribute to consumer confusion because of the way they list the test results. The FTC reports highlight minute differences in "tar" delivery among different ultra-low brands. The FTC presentation of the test results implies that differences of 1 mg or less in "tar" delivery have meaningful health consequences, an unsupportable implication. This lends itself to misleading exploitation in some cigarette advertising.

### Advertising Excesses

Current advertisements for CARLTON, CAMBRIDGE and NOW cigarettes, all of which claim to be "the lowest" in "tar" (examples attached), are clearly confusing and misleading. Both CARLTON and NOW have used the lead, "latest U.S. Gov't report". This kind of advertising exploits the FTC testing program to gain a competitive edge and to mislead consumers into believing that: (1) there is a measurable difference between cigarettes of .01 and .5 mg "tar" when, in fact, differences so small cannot be accurately measured by the test machine; and (2) "tar" differences of 1 mg or less have meaningful health effects, when there is no evidence that this is true.

FTC's present system further contributes to consumer deception because it allows some cigarette companies to promote heavily a "box" brand, without adequately distinguishing it from the soft pack of the same brand name, which delivers considerably more "tar". In fact, however, the companies produce such a small volume of the box brand as to make it a phantom brand that is rarely found in the marketplace. On the other hand, the soft-pack version bearing the identical brand name and package design but testing at a considerably higher "tar" level, is the version readily available to the consumer. This "bait-and-switch" advertising is encouraged by the FTC's emphasis of minute, insignificant differences in smoke deliveries in its current reporting format.

### A Proposal For Change

A simple common sense change in the way FTC's testing and reporting is done will preserve its integrity and effectiveness and shore-up public confidence in the program.

The present standardized test procedure, which treats all cigarettes the same, is not in need of change. No machine testing program can duplicate all the varied smoking habits of the entire smoking population. The sensible step to take is to continue the present test methodology, but change the reporting format. This might be done by reporting all cigarette yields in one of four categories, e.g., ultra-low "tar" (below 6 mg), low "tar" (6 to 10 mg), medium "tar" (11 to 15 mg), and high "tar" (above 15 mg).

In addition, an EPA-type disclaimer might be adopted to warn that the FTC figures are standardized measurements derived by laboratory tests; any smoker may get more or less smoke depending on the way he or she smokes the brand in question. The Commission should also monitor misleading "lowest" advertisements and police "bait-and-switch" packaging scams.

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